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EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,385

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/18/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: non-Final Office Action.

DETAILED ACTION

Claim Objections

Claims 9, 13 and 15 are objected to because of the following informalities:

Regarding claim-9:

In the second line of the claim paragraph beginning with "an upper sleeve portion"; it is unclear to the Examiner the phrase "extending a distance therefrom": the paragraph should be revised to indicate what the upper sleeve portion is extending a distance from as cited.

Regarding claims-13 and 15:

In the paragraph of the claims beginning with "an upper sleeve portion"; the limitation "extending a distance therefrom", appears to be redundant to the limitation "extending from the skirt portion", as cited.

In claim-13 in the paragraph beginning with "a flexible preformed base", and in the third line of said paragraph; "shaped sized" should be --shaped and sized--.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Instant claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1, 3 and 4 of U.S. Patent No. 5,307,606.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the pot cover formed having a closed bottom and sheet extension extending a distance from the top of the pot cover as recited in the conflicting independent claim-1, in combination with the perforations extending between the sheet of material and the sheet extension and method of tearing along the perforations as recited in the conflicting dependent claim-4, encompass the plant package of the instant independent claim-1 wherein, a plant covering having a closed bottom further comprises an upper sleeve portion detachable from a lower portion as cited.

Instant dependent claim-2 is encompassed by the method of conflicting dependent claim-3.

Instant dependent claim-3 is broadly encompassed by the conflicting independent claim-1 pot cover formed thereby.

Instant dependent claim-4 is encompassed by the pot cover of conflicting independent claim-1, wherein substantial covering of the floral grouping including the bloom end is recited.

Instant claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1, 3 and 4 of U.S. Patent No. 5,479,758.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the pot cover formed having a bottom and sheet extension as recited in the conflicting independent claim-1, in combination with the method of removing the extension as recited in the conflicting dependent claim-4, encompass the plant package of the instant independent claim-1 wherein, a plant covering having a closed bottom further comprises an upper sleeve portion detachable from a lower portion as cited.

Instant dependent claim-2 is encompassed by the method of conflicting dependent claim-3.

Instant dependent claim-3 is broadly encompassed by the conflicting independent claim-1 pot cover formed thereby.

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Instant dependent claim-4 is encompassed by the pot cover of conflicting dependent claim-3, wherein substantial covering of the floral grouping including the bloom end is recited.

Instant claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1, 3 and 4 of U.S. Patent No. 5,699,648.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the pot cover formed having a bottom and sheet extension as recited in the conflicting independent claim-1, in combination with the method of removing the extension as recited in the conflicting dependent claim-4, encompass the plant package of the instant independent claim-1 wherein, a plant covering having a closed bottom further comprises an upper sleeve portion detachable from a lower portion as cited.

Instant dependent claim-2 is encompassed by the method of conflicting dependent claim-3.

Instant dependent claim-3 is broadly encompassed by the conflicting independent claim-1 pot cover formed thereby.

Instant dependent claim-4 is encompassed by the pot cover of conflicting dependent claim-3, wherein substantial covering of the floral grouping including the bloom end is recited.

Instant claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1 and 2 of U.S. Patent No. 5,956,898.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the pot cover having a bottom, skirt portion and upper sleeve portion, wherein the skirt portion is detachable from the upper portion, as recited in the conflicting independent claim-1, encompass the plant package of the instant independent claim-1 wherein, a plant covering having a closed bottom, a lower portion and an upper sleeve portion, wherein the upper sleeve portion is detachable from the lower portion via non-linear perforations is cited.

Instant dependent claim-2 is encompassed by the covering of conflicting dependent claim-2.

Instant dependent claim-3 is broadly encompassed by the conflicting independent claim-1 pot cover.

Instant dependent claim-4 is encompassed by the pot cover of conflicting independent claim-1.

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Instant claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1- 4 of U.S. Patent No. 6,192,625 and over claims 1- 4 of U.S. Patent No. 6,418,662.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the covering for a pot as recited in the conflicting independent claims-1 encompasses the plant package of the instant independent claim-1.

Instant dependent claim-2 is encompassed by the pot covering of conflicting dependent claims-2.

Instant dependent claims 3 and 4 are identical to the conflicting dependent claims 3 and 4.

Instant claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1-4 of U.S. Patent No. 6,499,253.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the plant package cited in the instant independent claim-1 is a rewording of the covering for a pot as recited in the conflicting independent claim-1.

Instant dependent claims 2-4 are identical to the conflicting dependent claims 2-4.

Instant claims 5-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1-4 of U.S. Patent No. 6,418,662.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the plant package cited in the instant independent claim-5 is a rewording of the covering for a pot as recited in the conflicting independent claim-1.

Instant dependent claims 6-8 are identical to the conflicting dependent claims 2-4.

Instant claims 5-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1-4 of U.S. Patent No. 6,192,625.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the plant package cited in the instant independent claim-5 having a base portion, is a rewording of the covering for a pot as recited in the conflicting independent claim-1, wherein a flexible preformed base portion is recited.

Instant dependent claim-6 is encompassed by the conflicting dependent claim-2.

Instant dependent claim-7 is encompassed by the conflicting dependent claim-3.

Instant dependent claim-8 is identical to the conflicting dependent claim-4.

Instant claims 5-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1-4 of U.S. Patent No. 5,956,898.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the plant package cited in the instant independent claim-5 having a base portion and non-linear perforations, is a rewording of the covering for a pot as recited in the conflicting independent claim-1 in combination with dependent claim-4, wherein a flexible preformed base portion and angularly arranged perforations are recited.

Instant dependent claim-6 is encompassed by the conflicting dependent claim-2.

Instant dependent claim-7 is encompassed by the conflicting independent claim-1.

Instant dependent claim-8 is encompassed by the conflicting independent claim-1.

Instant claims 5-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1-4 of U.S. Patent No. 5,479,758 and U.S. Patent No. 5,699,648 and U.S. Patent No. 5,307,606.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the plant package cited in the instant independent claim-5 having a base portion, a skirt portion and detachable upper sleeve portion via non-linear perforations, is encompassed by the combination of the conflicting independent claims-1 and dependent claims-2 and 4,

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wherein a flexible preformed base portion having an attached skirt portion and sheet extension extending outwardly from the skirt portion is recited.

Instant dependent claim-6 is encompassed by the conflicting dependent claims-3.

Instant dependent claim-7 is encompassed by the conflicting independent claims-1.

Instant dependent claim-8 is encompassed by the conflicting independent claims-1.

Instant claims 9-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1-4 of U.S. Patent No. 6,418,662.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the plant package cited in the instant independent claim-9, having a flexible preformed base, is a rewording of the covering for a pot as recited in the conflicting independent claim-1, wherein a base portion dimensioned to cover, is recited.

Instant dependent claim-10 is encompassed by the conflicting dependent claim-2.

Instant dependent claims 11-12 are identical to the conflicting dependent claims 3-4.

Instant claims 9-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1-4 of U.S. Patent No. 6,192,625.**

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Although the conflicting claims are not identical, they are not patentably distinct from each other because; the plant package cited in the instant independent claim-9, is reworded as a covering for a pot as recited in the conflicting independent claim-1.

Instant dependent claims 10-12 are identical to the conflicting dependent claims 2-4.

Instant claims 9-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1-2 of U.S. Patent No. 5,956,898.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the plant package cited in the instant independent claim-9, having a non-linear line of perforations, is a rewording of the covering for a pot having a curved line of perforations, as recited in the conflicting independent claim-1.

Instant dependent claim-10 is encompassed by the conflicting dependent claim-2.

Instant dependent claims 11-12 are encompassed by the conflicting independent claim-1.

Instant claims 9-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable **over claims 1-4 of U.S. Patent No. 5,479,758 and U.S. Patent No. 5,699,648 and U.S. Patent No. 5,307,606.**

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Although the conflicting claims are not identical, they are not patentably distinct from each other because; the plant package cited in the instant independent claim-9, having a flexible base portion, a skirt portion and detachable upper sleeve portion via non-linear perforations, is encompassed by the combination of the conflicting independent claims-1 and dependent claims-2 and 4, wherein a formed cover having a top and bottom providing a receiving space for a pot, and having an attached skirt and removable extension portion is recited.

Instant dependent claim-10 is encompassed by the conflicting dependent claims-3.

Instant dependent claims 11-12 are encompassed by the conflicting independent claims-1.

Instant independent claims 13 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over independent claims-1 of U.S. Patent Numbers 6,418,662 and 6,192,625 and 5,956,898, and over the combination of independent claims-1 and dependent claims-2 of conflicting U.S. Patent Numbers 5,699,648 and 5,479,758 and 5,307,606.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 8, 9, 12, 13 and 15 are rejected under 35 U.S.C. 103(a)

as being unpatentable over Landau (US 5,235,782) 1993.

Regarding independent claim-1:

Landau '782 depicts a plant package in Figure-1 comprising a closed bottom, an outer surface and pot receiving space as cited in the instant claim preamble.

Landau further depicts a lower portion (12) as cited, and an upper sleeve portion readable as (14) or (16/44) or a combination of (14, 16/44) extending a distance from the lower portion as cited; wherein the upper sleeve portion is detachable from the lower portion via a non-linear line of perforations (26).

Landau does not depict the outer surface area of the lower portion as less than the outer surface area of the upper sleeve portion when the upper sleeve portion is detached from the lower portion as cited.

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Landau does depict a tear line (26) which would be obvious to one of ordinary skill in the art to relocate anywhere along the sleeve outer portion making capable the outer surface area of the lower portion to be less than the outer surface area of the upper sleeve portion as cited.

Regarding independent claim-5:

Landau '782 depicts a plant package in Figure-1 comprising a closed bottom, an outer surface and pot receiving space as cited in the instant claim preamble.

Landau further depicts a base portion (12), a skirt portion (14), and an upper sleeve portion (28) wherein, the upper sleeve portion (28) is detachable from the skirt portion (14) via a non-linear line of perforations as cited in the instant claim.

Landau does not depict the outer surface area of the lower portion as less than the outer surface area of the upper sleeve portion when the upper sleeve portion is detached from the lower portion as cited.

Landau does depict a tear line (26) which would be obvious to one of ordinary skill in the art to relocate anywhere along the sleeve outer portion making capable the outer surface area of the lower portion to be less than the outer surface area of the upper sleeve portion as cited.

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Regarding independent claim-9:

The discussions above regarding independent claims 1 and 5 are relied upon for the features common to the independent claims.

The structural distinction between instant independent claim-9 and instant independent claim-5, is the flexible preformed base portion having an upper end and closed lower end as cited; said distinguishing features are evident in Figure-1 of Landau.

Regarding independent claims 13 and 15:

The discussions above regarding independent claims 1, 5 and 9 are relied upon for the features common to the independent claims.

The structural distinction between instant independent claims 13 and 15 and instant independent claim-9, is the citation of angularly arranged perforations (claim-13) and a curved line of perforations (claim-15), wherein a non-linear line of perforations is cited in claims 1, 5 and 9.

The Examiner considers the angularly arranged and curved line of perforations as cited in claims 13 and 15 to be encompassed by the non-linear line of perforations as cited in claims 1, 5 and 9.

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Regarding claims 4, 8 and 12:

The discussion above regarding claims 1, 5 and 9 are relied upon.

The upper sleeve portion of the Landau covering is capable of substantially enclosing the floral grouping as cited and as depicted by Landau.

Claims 2, 3, 6, 7, 10, 11, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landau (US 5,235,782) 1993, as applied to claim-1 above, and further in view of Witte (US 4,333,267) 1982.

Regarding claims 2, 6, 10, 14 and 16:

The discussions above regarding claims 1, 5, 9, 13 and 15 are relied upon.

Landau does not depict or disclose bonding material disposed on a portion of the upper sleeve portion as cited.

Witte '267 teaches a protective sleeve having an upper and lower portion evident, with an adhesive strip (8 or 16) disposed on a portion of the upper sleeve portion, wherein portions of the upper sleeve portion can be connected to form a closed upper end as cited (Witte; column-2, lines 60-68, and column-3, lines 1-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Landau to include bonding material as taught by Witte and cited in the instant claim, for the well known advantages of that feature; specifically to enable closure of the upper end as taught by Witte.

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Regarding claims 3, 7 and 11:

The discussions above regarding claims 1, 5 and 9 are relied upon.

Landau as modified by Witte renders obvious a tapered lower portion as cited; furthermore, tapered sleeves are well known in the sleeve art.

Conclusion

The instant claims have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the conflicting continuing Patents, and over the art of Landau '782 and Landau in view of Witte '267.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo

Francis T. Palo
Examiner
Art Unit 3644

FP